

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE NICHOLS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Case No. 14-11062
Honorable Linda V. Parker

Defendant.

OPINION AND ORDER

On March 11, 2014, Plaintiff filed this lawsuit challenging the Commissioner of Social Security’s (“Commissioner’s”) final decision denying Plaintiff’s application for Disability Insurance Benefits and Supplemental Security Income under the Social Security Act. On March 12, 2014, this Court referred the lawsuit to Magistrate Judge R. Steven Whalen for all pretrial matters proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation (“R&R”) on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 3.) The parties subsequently filed cross-motions for summary judgment. On February 28, 2015, Magistrate Judge Whalen issued his R&R recommending that this Court grant Plaintiff’s motion, deny the Commissioner’s motion, and remand the matter

pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings. (ECF No. 17.)

In his R&R, Magistrate Judge Whalen concludes that the Administistrate Law Judge erred in his evaluation of Plaintiff's limitations resulting from his back condition. (*Id.* at 19-21.) Magistrate Judge Whalen further finds a discrepancy between the hypothetical question forming the basis of the vocational expert's job testimony and the assigned residual functional capacity. (*Id.* at 21-22.) At the conclusion of the R&R, Magistrate Judge Whalen advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at 22-23.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.*, citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Whalen. The Court therefore adopts Magistrate Judge Whalen's February 28, 2015 Report and Recommendation.

Accordingly,

IT IS ORDERED, that Plaintiff's motion for summary judgment is

GRANTED;

IT IS FURTHER ORDERED, that Defendant's motion for summary judgment is **DENIED**;

IT IS FURTHER ORDERED, that this matter is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with the R&R.

S/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: March 23, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, March 23, 2015, by electronic and/or U.S. First Class mail.

S/ Richard Loury
Case Manager